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OGC REVIEW COMPLETED

TS-800679
5 June 1980

25X1A MEMORANDUM FOR: [REDACTED]
Special Assistant to the DCI

25X1A FROM : [REDACTED]
Office of General Counsel

SUBJECT : DCI Responsibilities in Wartime

1. This is in response to your request for a compilation of the Intelligence Community responsibilities of the Director of Central Intelligence (DCI) which would remain in effect in wartime. Considering the relatively small number of DCI Intelligence Community responsibilities which would not continue in effect in a wartime situation, we believe that your request would be better framed by asking for a compilation of those DCI Intelligence Community responsibilities that would not remain in effect in wartime, rather than those that would remain in effect. Accordingly, as we agreed in our recent conversation, this memorandum outlines only those Intelligence Community responsibilities which could arguably be taken away from the DCI in wartime pursuant to specific provisions of law. [REDACTED]

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NITC

2. As you know, section 1-504 of Executive Order 12036 provides that control of the National Intelligence Tasking Center (NITC) may be transferred to the Secretary of Defense at the direction of the President. However, the transfer of this responsibility is not mandatory nor does the language of the section specify that such a transfer necessarily is contemplated in a wartime situation. [REDACTED]

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3. The applicable National Security Council Intelligence Directives (NSCIDs) and Director of Central Intelligence Directives (DCIDs) narrowly prescribe the Intelligence Community responsibilities which are to be taken away from the DCI in wartime. [REDACTED]

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[REDACTED] However, paragraph 6 of the NSCID and paragraph 1 of the DCID both provide that at the direction of the President, or "in active theaters of war where U.S. forces are engaged", the NSCID and DCID do not apply. Similarly, DCID No. 5/2 and DCID No. 5/4, which establish the role of the DCI in the coordination of foreign liaison and the coordination of cover support, respectively, are rendered inapplicable in identical circumstances as provided by the first paragraph of both DCIDs. [REDACTED]

COORDINATION
OF FOREIGN
LIAISON &
COVER SUPPORT

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ORIGINAL CL BY [REDACTED]
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4. NSCID No. 8 requires the outright transfer of DCI control over the National Photographic Interpretation Center to the Secretary of Defense in wartime. This transfer is mandatory and is explicitly triggered, under the language of paragraph 2a(3), by a wartime situation.

NPIC

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ESPIONAGE
CIA Power

5. Finally, NSCID No. 5, which concerns espionage and counterintelligence abroad, expressly provides as follows in paragraph 8 of the NSCID:

In active theaters of war where U.S. forces are engaged, or when the President so directs:

a. Except as provided in subparagraph b below, the entire Central Intelligence Agency organization conducting espionage and clandestine counterintelligence operations in or from a theater shall, as a component force, be under the direct command of the U.S. Theater Commander, in accordance with agreements separately reached between the Director of Central Intelligence and the Secretary of Defense, and shall provide espionage and counterintelligence support to military operations.

b. Espionage and counterintelligence operations that because of some exceptional political, diplomatic or other implications, are conducted independently by the Central Intelligence Agency, shall be coordinated by the Director of Central Intelligence with the Secretary of Defense and with the Secretary of State.

c. The Secretary of Defense and the Director of Central Intelligence shall establish general procedures for the coordination of liaison on clandestine activities between U.S. military commanders and foreign services that engage in such activities.

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6. This provision of NSCID No. 5 places military commanders in direct control of Central Intelligence Agency (CIA) personnel under certain conditions. Further, this provision clearly implies that only intelligence operations with "exceptional political, diplomatic or other implications" may be conducted independent of military control by the CIA in or from a theater of war; and even then, the DCI must coordinate such operations with the Secretary of Defense and

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the Secretary of State. Moreover, the terms of the NSCID make the Secretary of Defense equally responsible with the DCI for the establishment of foreign liaison procedures applicable to military commanders.

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7. Though the various Intelligence Community responsibilities which could arguably be taken away from the DCI in wartime, as described above, are significant, the potential loss of such responsibilities must be viewed in the wider context of the numerous other DCI Intelligence Community responsibilities completely unaffected in wartime, since every DCI Intelligence Community responsibility not explicitly subject to possible modification in wartime would continue in effect undisturbed. I have attached a memorandum for your information which represents a thoughtful analysis of the wartime provisions contained in NSCID No. 4, NSCID No. 5, and NSCID No. 8. While the memorandum was written prior to the issuance of Executive Order 12036, and therefore does not take into account the possible wartime transfer of control of the NITC to the Secretary of Defense, nevertheless the memorandum constitutes a valuable and reasonably current reflection of much of the law in this area. It should be noted, however, that no definitive interpretations of the wartime provisions of the NSCIDs described in the attached memorandum have been made by this Office.

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Attachment

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